

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1944.

No. 231

GENERAL EXPORTING COMPANY, an Illinois
corporation,
Petitioner (Appellant below),

vs.

STAR TRANSFER LINE, a Michigan corporation, and
SOUTHARD & CO., Ltd., an English corporation,
Respondents (Appellees below).

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN, AND BRIEF IN SUPPORT THEREOF.

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**PETITION FOR WRIT OF CERTIORARI TO THE
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IN SUPPORT THEREOF.**

*To the Honorable, the Chief Justice and the Associate Jus-
tices of the Supreme Court of the United States:*

Your petitioner, General Exporting Company, an Illi-
nois corporation, respectfully prays for a writ of certiorari
herein to review the final decision and judgment of the
Supreme Court of the State of Michigan, said decision

having been rendered on February 24, 1944, in which cause said Supreme Court of Michigan affirmed a judgment entered in the Superior Court of Grand Rapids, Michigan, in favor of respondents and against your petitioner. Said decision and judgment of the Supreme Court of Michigan became final on the 5th day of April, 1944, when that Court denied the petition for rehearing of your petitioner. The Supreme Court of Michigan entered its decree predicated upon its decision on May 5th, 1944.

Summary Statement of the Matter Involved.

An interpleader action was instituted by Star Transfer Line, a Michigan corporation, one of the respondents, in the Superior Court of Grand Rapids, Michigan, wherein your petitioner, Southard & Co., Ltd., an English corporation, John J. McKeown, and Arthur L. Schwartz, as receiver, were made parties defendants (Original R. 15).

The subject matter of the litigation is 799 cases of Scotch whiskey, which were stored with Star Transfer Line by petitioner in so-called United States bonded storage in the warehouse of Star Transfer Line located in Detroit, Michigan.

The bill of interpleader was alleged to have been filed to determine the ownership of the whiskey as between petitioner and John J. McKeown, on the one hand, and Southard & Co., on the other.

The 799 cases of whiskey were represented by two shipments made by Southard & Co. to petitioner, and shipped from Glasgow, Scotland.

There was no dispute among any of the parties to the action but that petitioner (the consignee) took the necessary lawful steps to clear the two shipments of whiskey upon their arrival at the port of entry, and that each

clearance was had in pursuance to the United States customs rules and regulations.

Each shipment was cleared by petitioner upon its arrival by petitioner presenting to the customs officials the negotiable bill of lading issued to Southard Co. by the carrier for each shipment (Original R. 552 and 553), one of which was endorsed in blank (Original R. 553), and for each shipment Southard & Co. billed petitioner for the purchase price thereof, and in addition charged against petitioner all the carriage charges and other expenses incident to each shipment and the purchase thereof (Original R. 544 *et seq.*), and Southard & Co. also executed the required consular acknowledgment (Original R. 544 and 545) evidencing a sale of the whiskey by Southard & Co. to petitioner.

There was also no dispute that after the two shipments of whiskey were cleared by petitioner that all such whiskey was stored by it in United States bonded storage with Star Transfer Line, and that thereafter Star Transfer Line issued its negotiable warehouse receipt for said 799 cases of Scotch whiskey to petitioner as the sole and complete owner of all said whiskey.

Petitioner had duly issued to it by the United States Government a so-called Basic Permit (Original R. 549), which permit is essential to the lawful importation into the United States of spirituous liquors. It was admitted by Southard & Co. that it had not had issued to it such Basic Permit. Southard & Co. sought to justify such lack of a Basic Permit on the ground that petitioner was possessed of such permit, and petitioner being its agent, that it was not required to have such permit.

There was no contest as between petitioner and John J. McKeown, in that petitioner had transferred to him all its monetary interest in the whiskey in question and had contracted to sell the whiskey for and on behalf of McKeown, and to deliver to him the proceeds thereof, which contractual obligation still subsists.

Petitioner alleged in its answer, supported by documentary evidence attached thereto as exhibits, that all of the whiskey in question was sold to it by Southard & Co., and that sole and complete title thereto was vested in petitioner.

Petitioner contended that at no time had it been the agent of Southard & Co., and could not lawfully be such agent, and that it had no relationship with Southard & Co. other than the exclusive right to sell in the United States whiskey manufactured by Southard & Co., and to purchase the same at a fixed price and obtain title thereto in Scotland.

The answer of petitioner recited in detail how and in what manner the two shipments of whiskey were purchased by petitioner from Southard & Co. and delivered to the latter (Original R. 95 *et seq.*).

The trial resulted in a finding that Southard & Co. was the sole and exclusive owner of all said whiskey, upon which finding a decree was entered.

During the course of the trial petitioner presented a motion to dismiss the interpleader action (Original R. 139) on a plurality of grounds, one of which was that only a Federal court has jurisdiction of property detained by an officer under authority of any revenue law of the United States. Another of such grounds was that Southard & Co. did not have issued to it a so-called Basic Permit, and that by reason thereof could not lawfully be possessed of said whiskey within the United States. The motion was denied (Original R. 324).

In his opinion (Original R. 482) the trial judge specifically held that the Federal Alcohol Administration Act (27 U. S. C. A., Chap. 9, Sec. 203) could not be construed to the effect that petitioner could not lawfully be the agent of Southard & Co., and that Southard & Co. was not required to have issued to it a so-called Basic Permit, the trial judge having reached the conclusion that petitioner was an agent of Southard & Co. and that by reason thereof Southard & Co. could make lawful use of the Basic Permit issued to petitioner (Original R. 493).

This construction of the Federal Alcohol Administration Act, erroneous and without foundation in law as we assert, was called to the attention of the Supreme Court of Michigan, but that court did not deem it appropriate to give its judgment thereon.

On appeal to the highest court of the State of Michigan, namely the Supreme Court, the decree of the trial court was affirmed except as to certain provisions relating to costs.

Petitioner in a petition for rehearing duly filed with the Supreme Court of Michigan contended that the original decree and its affirmance by the Supreme Court was wholly erroneous, in that both the trial court and the reviewing court wholly misconceived the applicable Federal statutes and customs rules and regulations hereinafter recited. The petition for rehearing was denied without opinion.

Thereafter, that is on May 5th, 1944, the Supreme Court of Michigan entered a decree predicated upon its opinion.

Jurisdictional Statement.

Petitioner relies upon the following to sustain the jurisdiction of this Court:

(a) United States Judicial Code, Sec. 237, 28 U. S. C. A. 344, as amended, which provides that it shall be com-

petent for this Court, by certiorari, to require that there be certified to it for review and determination any cause wherein a final judgment or decree has been rendered by the highest court of a state in which a decision could be had wherein a title, right, privilege or immunity is specially set up or claimed by either party under the Constitution, or statute of, or authority exercised under, the United States.

(b) 28 U. S. C. A. 747, which provides that all property taken or detained by an officer or other person, under authority of any revenue law of the United States shall be decreed to be in the custody of the law, and subject only to the orders and decrees of the courts of the United States.

(c) 19 U. S. C. A., Chap. 4, Sec. 1483, which provides that all merchandise imported into the United States shall be held to be the property of the person to whom the same is consigned, and the holder of a bill of lading duly indorsed by the consignee therein named, or, if consigned to order, by the consignor, shall be deemed the consignee thereof; and further providing that a person making entry of merchandise under the provisions of subdivision (h) or (i) of section 1484 (relating to entry on carrier's certificate and on duplicate bill of lading, respectively) shall be deemed the sole consignee thereof.

(d) 19 U. S. C. A., Chap. 4, Sec. 1485, which provides that every consignee making an entry under the provisions of section 1484 of this title shall make and file therewith, in a form to be prescribed by the Secretary of the Treasury, a declaration under oath, stating whether the merchandise is imported in pursuance to a purchase or an agreement to purchase, or whether it is imported other-

wise than in pursuance of a purchase or agreement to purchase.

(e) 19 U. S. C. A., Chap. 1, Sec. 66, which provides that the Secretary of the Treasury shall prescribe forms of entry of merchandise into the United States, and shall prescribe the rules and regulations to be used in carrying out the provisions of the law.

(f) 27 U. S. C. A., Chap. 9, Sec. 203, which provides, *inter alia*, that it shall be unlawful, except pursuant to a basic permit issued under the Act, to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine or malt beverages so imported.

(g) United States Customs Regulations, Sec. 289E, which provides that a foreign corporation cannot enter merchandise for consumption unless it has in the State where the port of entry is located a resident agent authorized to accept service of process against such corporation and files a bond with a resident corporate surety to secure the payment of any increased and additional duties which may be found due.

Reasons Relied Upon for Allowance of Writ.

1. The decision of the Supreme Court of Michigan has caused petitioner great and irreparable injury in that petitioner has been deprived of its property without due process of law in violation of its rights under the Constitution of the United States.

2. The Supreme Court of Michigan in affirming the judgment and decree of the trial court erroneously determined and adjudged that the Superior Court of Grand Rapids had jurisdiction to determine title to the 799 cases of Scotch whiskey which were then in the exclusive custody and control of the Collector of Customs for the Port of Detroit, Michigan.

3. The Supreme Court of Michigan in affirming the judgment and decree of the trial court erroneously determined and adjudged that the Collector of Customs for the Port of Detroit, Michigan, could be bound thereby without said Collector of Customs being a party to such proceeding.

4. The Supreme Court of Michigan in affirming the judgment and decree of the trial court erroneously determined and adjudged that Southard & Co., one of the respondents herein, was the sole and exclusive owner of the whiskey in question although said Southard & Co. was not possessed of a so-called Basic Permit as provided by Sec. 3 of the Federal Alcohol Administration Act, U. S. Code, Title 27, Chap. 8, Sec. 203.

5. The Supreme Court of Michigan in affirming the judgment and decree of the trial court erroneously determined and adjudged that the petitioner was the agent of said Southard & Co., and that thereby said Southard & Co. was not required to be possessed of said Basic Permit.

6. The Supreme Court of Michigan in affirming the judgment and decree of the trial court erroneously determined and adjudged that the Superior Court of Grand Rapids had jurisdiction of the subject matter of the interpleader proceeding, being 799 cases of Scotch whiskey

then in the exclusive custody and control of the Collector of Customs for the Port of Detroit.

7. The Supreme Court of Michigan in affirming the judgment and decree of the trial court erroneously determined and adjudged that an interpleader proceeding might be maintained in a State court wherein the subject matter thereof is whiskey in the sole and exclusive custody and control of the Collector of Customs for the Port of Detroit, wherein plaintiff was wholly without power and ability to deliver unto the State court, either physically or symbolically, the subject matter of the interpleader proceeding.

8. The Supreme Court of Michigan in affirming the judgment and decree of the trial court erroneously determined and adjudged that the trial court had jurisdiction of the 799 cases of Scotch whiskey in question which were then in the exclusive custody and control of the Collector of Customs for the Port of Detroit, in which proceeding said Collector of Customs was not a party.

(9) The Supreme Court of Michigan in affirming the judgment and decree of the trial court erroneously determined and adjudged that said Southard & Co. might lawfully have title to the whiskey in question without having first obtained a so-called Basic Permit and otherwise having first complied with the Federal statutes and customs rules and regulations governing and regulating the importation into and sale in the United States of alcoholic liquors.

(10) The Supreme Court of Michigan in affirming the judgment and decree of the trial court erroneously determined and adjudged that the trial court was vested with right and authority to enter any order, judgment or de-

cree affecting title to said whiskey unless the Collector of Customs for the Port of Detroit was made a party to the proceeding; and said Collector of Customs could not be made a party to any proceeding affecting title to whiskey in his sole and exclusive custody and held for the payment of duties and charges imposed by Federal statutes except in a Federal court in the district where said whiskey is so held.

(11) The Supreme Court of Michigan in affirming the judgment and decree of the trial court erroneously determined and adjudged that Star Transfer Line was not estopped from asserting that petitioner was the legal owner of the whiskey covered by the negotiable warehouse receipt issued by it to petitioner, in that said whiskey was stored by petitioner with Star Transfer Line in pursuance to the applicable Federal statutes and customs rules and regulations governing and regulating the importation into and sale in the United States of alcoholic liquors.

(12) The Supreme Court of Michigan in affirming the judgment and decree of the trial court erroneously determined and adjudged that sole and exclusive title to all the whiskey in question was not in petitioner under and in pursuance to the provisions of the Federal Warehouse Act, the Federal Bill of Lading Act.

WHEREFORE your petitioner prays that a writ of certiorari issue out of and under the seal of this Honorable Court directed to the Supreme Court of Michigan, commanding that Court to certify and send to this Court for its review and determination on a day certain, to be therein named, a full and complete transcript of the record and of the proceedings of said Court in the case numbered 42404,

and entitled Star Transfer Line, a Michigan corporation, Plaintiff-Appellee v. General Exporting Company, an Illinois corporation, and John J. McKeown, Defendants-Appellants, Southard & Company, Ltd., an English corporation, Defendant-Appellee, and that the opinion and judgment of said Supreme Court of Michigan be reviewed by this Honorable Court, and that thereupon the same may be reversed, and that your petitioner may have such other and further relief in the premises as to your Honorable Court may seem meet and just.

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